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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Alex M. Greenberg

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

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MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/684,882	Applicant(s) GREENBERG, ALEX M.	
	Examiner ROBIN HYLTON	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11-15 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,11-15 and 17-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☒ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application |
| 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) ☐ Other: _____ |

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DETAILED ACTION

1. The finality of the previous Office action has been vacated. An action on the merits follows.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the adhesive disposed about the aperture for engaging a straw in the aperture must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show an adhesive surrounding the aperture for engaging the a straw when disposed in the aperture as

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described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Chao (US Des. 387,396). It is again noted that the instant claims are only drawn to a holding device and does not include a straw or a bottle.

Chao discloses in Fig. 5 a straw support portion dimensioned for placement across a mouth of a bottle and comprising an aperture designed to receive a straw therethrough and to vertically support said straw with respect to said support portion; and a bottle retaining portion

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comprising at least one turn extending around said retaining portion, said at least one turn comprising a first turn having an end attached to said straw support portion, and dimensioned to extend around an outer surface of the bottle, wherein said at least one turn extends circularly about said straw support portion from said first end to a second end, said at least one turn having an inner edge with an inner radius and an outer edge with an outer radius wherein said inner and outer radii are substantially constant around said at least one turn, said retaining portion further comprising a radial connecting portion connected to said inner edge at said first end of said first turn and to a radially outer edge of straw support portion and connecting said first end of said first turn to said straw support portion, wherein said retaining portion comprises a plurality of turns including a second turn attached to said first turn, said retaining portion capable of surrounding a bottle and performing as a bottle retaining portion.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claim 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Chao in view of Berger (US 5,992,658).

Chao is silent regarding the material of the holder.

Berger discloses a straw holder formed of a plastic or rubber membrane sheet. (col. 3, lines 7-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the holder of Chao of a plastic sheet as taught by Berger. Doing so would provide a holder of strong, thin and flexible material capable of covering a bottle mouth opening, supporting a straw, and retaining itself on the bottleneck to allow for drinking from a bottle via a straw to prevent contaminants from entering the open bottle mouth.

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8. Claims 1, 2, 4, 9, 11, 13, 15, 17, and 22 rejected under 35 U.S.C. 103(a) as being unpatentable over Chao (US Des. 387,396) in view of Shaw (US 4,247,016). It is again noted that the instant claims are only drawn to a holding device and does not include a straw or a bottle.

Chao discloses in fig. 5 a holder comprising a centrally located straw support portion comprising an aperture defined by a hole and spirally radiating slits and a retaining portion comprise at least one turn extending around said retaining portion, said at least one turn comprising a first turn having an end attached to said straw support portion, and dimensioned to extend around an outer surface of a bottle, wherein said at least one turn extends spirally around said straw support portion, said at least one turn having an inner edge with an inner radius and an outer edge with an outer radius wherein said inner and outer radii increase substantially continuously around said at least one turn, wherein said retaining portion comprises a plurality of turns including a second turn attached to said first turn, said retaining portion capable of surrounding a bottle and performing as a bottle retaining portion. Chao is silent regarding the material of the holder and the aperture being formed as a slit.

Shaw discloses a conventional lid, i.e., a lid of thermoformed plastic sheet, having a straw support portion in the form of a slit **46** or an aperture **40** (column 4, line 31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the holder of Chao of a plastic sheet and to provide the hole in the form of a slit as taught by Shaw. Doing so would provide a holder of strong, thin and flexible material capable of covering a bottle mouth opening, supporting a straw, and retaining itself on the bottleneck to allow for drinking from a bottle via a straw to prevent contaminants from entering the open bottle mouth.

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9. Claim 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Chao as modified by Shaw as applied to claim 1 above, and further in view of Berger (US 5,992,658).

Chao as modified by Shaw discloses the claimed holder except for adhesive disposed about said aperture.

Berger discloses utilizing an adhesive (16) for surrounding an aperture (20) in a straw holder (18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of adhesive surrounding the straw support portion of the modified holder of Chao to provide additional securement of the holder over a bottle mouth.

10. Claims 14 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chao (US Des. 387,396) in view of Shaw (US 4,247,016) and Berger (US 5,992,658). It is again noted that the instant claims are only drawn to a holding device and does not include a straw or a bottle.

Chao discloses in fig. 5 a holder comprising a centrally located straw support portion comprising an aperture defined by a hole and spirally radiating slits and a retaining portion comprise at least one turn extending around said retaining portion, said at least one turn comprising a first turn having an end attached to said straw support portion, and dimensioned to extend around an outer surface of a bottle, wherein said at least one turn extends spirally around said straw support portion, said at least one turn having an inner edge with an inner radius and an outer edge with an outer radius wherein said inner and outer radii increase substantially continuously around said at least one turn, wherein said retaining portion comprises a plurality of turns including a second turn attached to said first turn, said retaining portion capable of surrounding a bottle and performing as a bottle retaining portion. Chao is

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silent regarding the material of the holder, the aperture being formed as a slit, and adhesive surrounding the aperture.

Shaw discloses a conventional lid, i.e., a lid of thermoformed plastic sheet, having a strewn support portion in the form of a slit **46** or an aperture **40** (column 4, line 31).

Berger discloses utilizing an adhesive (16) for surrounding an aperture (20) in a straw holder (18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the holder of Chao of a plastic sheet and to provide the hole in the form of a slit as taught by Shaw and to provide adhesive surrounding the aperture as taught by Berger. Doing so would provide a holder of strong, thin and flexible material capable of covering a bottle mouth opening, supporting a straw, and retaining itself on the bottleneck to allow for drinking from a bottle via a straw to prevent contaminants from entering the open bottle mouth.

Response to Arguments

11. Applicant's arguments, see the pre-appeal brief conference request, filed March 30, 2009, with respect to the rejection(s) of claim(s) 1, 2, 4-9, 11-15, and 17-22 under 35USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the newly found prior art.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

14. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720/80 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature_____

Date_____

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday, Tuesday, Thursday, and Friday from 8:00 a.m. to 2:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

July 6, 2009

/Robin A. Hylton/
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GAU 3781